

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200728005**
Release Date: 7/13/2007

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2056.07-00, 9100.00-00

Person To Contact: _____, ID No. _____

Telephone Number: _____

In Re:

Refer Reply To:
CC:PSI:B09
PLR-103364-07
Date:
March 22, 2007

Legend:

Decedent =
Spouse =
Trust =

Date 1 =
Date 2 =

Dear _____ :

This is in response to a letter dated January 15, 2007, from your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property ("QTIP") election under § 2056(b)(7) of the Internal Revenue Code with respect to a trust.

The facts submitted and representations made are as follows. Decedent died on Date 1, survived by Spouse. Prior to Decedent's death, Decedent and Spouse executed a revocable trust (Trust).

Article III, Section A of Trust provides that upon the death of either Decedent or Spouse, the trust estate is to be divided into two trusts, Trust A and Trust B. Article III, Section B provides that Trust A is to be funded with the survivor's (in this case, Spouse's) separate property and community interest in the trust estate. The remaining trust estate is to be allocated to Trust B and administered according to Article V of Trust.

Article V provides that during the lifetime of the survivor (in this case, Spouse) the trustee is to pay Spouse all trust income at least monthly and principal to provide for Spouse's maintenance, support, health, comfort, and well-being. Upon Spouse's death,

part of Trust B is to be distributed outright and the remainder of Trust B is to be held in further trust for the benefit of the children and grandchildren of Decedent and Spouse.

Spouse, as the executor of Decedent's estate, retained a qualified tax professional to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The Form 706 was timely filed. On the Schedule M of the Form 706, as filed, the tax professional failed to make or failed to advise Spouse, as executor of Decedent's estate, to make the QTIP election for part of Trust B's assets. This failure was discovered after the due date of the Form 706. Spouse, as executor of Decedent's estate, filed an amended Form 706 on Date 2, after the due date of the Form 706, on which a partial QTIP election was made.

Spouse, as executor of Decedent's estate, is requesting an extension of time under §§ 301.9100-1 and 301.9100-3 to make a partial QTIP election for Trust B under § 2056(b)(7) as of Date 2, the date the amended Form 706 was filed.

LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) disallows this deduction where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life; and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property,

payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts and representations made, we have determined that the standards of §§ 301.9100-1 and 301.9100-3 have been met. Therefore, an extension of time is granted until Date 2 to make a partial QTIP election with respect to Trust B.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes

cc: